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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

**The NVIDIA GPU Litigation**

**Case No. 08-cv-04312-JW**

**HEWLETT-PACKARD COMPANY'S  
 OPPOSITION TO THE REQUEST TO  
 FIND THE *DECKER* ACTION  
 UNRELATED TO THE NVIDIA GPU  
 LITIGATION**

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 GPU LITIGATION (08-CV-04312-JW)**

Hewlett-Packard Company (“HP”) respectfully submits this opposition to Plaintiff Katherine E. Decker’s (“Plaintiff Decker’s”) “request” to “unrelate” *Decker v. Hewlett-Packard Co.*, Case No. 09-cv-00295-JW (“*Decker*”) following the Court’s *sua sponte* ruling that *Decker* is related to and should be consolidated with the several earlier-filed, already-related actions and consolidated under the above-captioned docket (together, the “Consolidated Actions”). Plaintiff Decker’s request is without merit and this Court should not disturb its prior Order for the reasons set forth below.

## **I. INTRODUCTION**

On February 25, 2009, this Court found *sua sponte* that *Decker* is related to the Consolidated Actions and should be consolidated as part of the Nvidia GPU Litigation. *See* Docket No. 63, attached as Exh. 1 hereto. Plaintiff Decker, who’s putative class action complaint is not only the last to be filed among the nearly one dozen Consolidated Actions but is also sixth in line in terms of the complaints naming HP as a defendant, now asks the Court to vacate its earlier finding and “unrelate” *Decker* from the group. Plaintiff Decker cannot escape the reality that her claims are subsumed by the several, earlier-filed putative class actions asserted against HP. In order of filing, these cases are:

- 1) *Inicom Networks, Inc. v. NVIDIA Corp., et al.*, No. 08-cv-04332-JW (“*Inicom*”);
- 2) *Nat’l Bus. Officers Assoc., Inc. v. NVIDIA Corp., et al.*, No. 08-cv-05179-JW (“*NBOA*”);
- 3) *Olivos v. NVIDIA Corp., et al.*, No. 08-cv-05520-JW (“*Olivos*”);
- 4) *Waidzunas, et al. v. Hewlett-Packard Co.*, Case No. 08-cv-05081-JW (“*Waidzunas*”); and
- 5) *LeBlanc v. Hewlett-Packard Co.*, No. 09-cv-00328-JW (“*LeBlanc*”).<sup>1</sup>

Indeed, like the cases preceding it, *Decker* alleges claims against HP on behalf of a

<sup>1</sup> *Nakash v. NVIDIA Corp.*, No. 08-cv-04312-JW (“*Nakash*”), the earliest-filed of the Consolidated Actions, has been designated “lead case.” *See* Docket No. 63 (Exh. 1).

1 putative nationwide class of consumers who purchased overlapping computer models that  
 2 allegedly have exhibited coincidental performance deficiencies. Moreover, while Plaintiff  
 3 Decker argues that her claim is limited to alleged wireless internet connection problems, the same  
 4 alleged problems are part of the allegations of the remaining actions in the Consolidated Action.  
 5 Thus, as to HP, the claims asserted by Plaintiff Decker are not only substantially similar to the  
 6 multiple other already-related cases, but they also are asserted on behalf of a nearly identical  
 7 putative class.  
 8

9 Plaintiff Decker's remaining arguments are equally unavailing. First, not only have  
 10 substantially similar legal theories already been advanced against HP by the earlier-filed  
 11 Consolidated Actions naming HP as a defendant, but any lingering issues can be addressed by  
 12 way of the forthcoming consolidated amended complaint. Moreover, Plaintiff Decker's  
 13 contention that relationship and consolidation are improper because some of the Consolidated  
 14 Actions name Nvidia as an additional defendant and/or include non-HP computers is simply  
 15 illogical given that such variations did not preclude relationship or consolidation of the other  
 16 actions. The Court has concluded through its *sua sponte* Order that the result here should be no  
 17 different. Plaintiff Decker offers no reason to deviate from that ruling.  
 18

## 19 **II. ARGUMENT**

20 Under Local Rule 3-12, an action is related to another when:

- 21 (1) The actions concern substantially the same parties, property,  
 22 transaction or event; and
- 23 (2) It appears likely that there will be an unduly burdensome  
 24 duplication of labor and expense or conflicting results if the cases  
 are conducted before different Judges.

25 Civ. L.R. 3-12(a).

26 For the reasons set forth below, *Decker* fulfills these elements and, therefore, is primed for  
 27 relationship with the other Consolidated Actions pursuant to Local Rule 3-12.  
 28

1                   **A.     Decker Involves Substantially the Same Parties and Underlying**  
 2                   **Allegations As Inicom And The Already-Related Actions.**

3                   The parties in each action are substantially the same. Each plaintiff purports to represent  
 4                   the interests of an overlapping putative class of consumers who purchased allegedly defective HP  
 5                   computers. *Compare* First Amended *Inicom* Compl. (Docket No. 10) (“*Inicom* FAC”) at ¶ 1 (“all  
 6                   consumers who purchased . . . computers containing defective NVIDIA graphic controller chips”) *with*  
 7                   *Decker* Compl. (Exh. 2 hereto) at ¶ 53 (“all other persons in the United States . . . who  
 8                   purchased or acquired . . . HP laptops”). Indeed, *Decker* and *Inicom*, the earliest-filed matter  
 9                   naming HP as a defendant, each expressly identify the HP Pavilion dv2000, dv6000 and dv9000  
 10                  series notebooks and Compaq Presario v3000 and v6000 series notebooks as part of the putative  
 11                  class. *Compare Inicom* FAC at ¶ 26 *with Decker* Compl. (Exh. 2) at ¶ 16. The *Decker* Plaintiff,  
 12                  therefore, is already a member of the putative *Inicom* class.

13                  Notwithstanding her preexisting membership in the putative *Inicom* class, and the fact that  
 14                  *Inicom* was marked related with *Nakash, et al.* weeks before the *Decker* Complaint was even  
 15                  filed, Plaintiff Decker also contends that relationship is somehow inappropriate because several of  
 16                  the Consolidated Actions implicate non-HP computers and defendants. This is a red-herring at  
 17                  best – relationship is appropriate even where, as here, the defendants in each action are not  
 18                  identical. *See, e.g., Ervin v. Judicial Council of California*, No. C 06-7479 CW, 2007 WL  
 19                  1489165, \*2 (N.D. Cal. May 18, 2007) (explaining that cases were substantially similar and  
 20                  relation proper where “[t]he only difference between the two cases is that . . . Plaintiff added new  
 21                  parties and causes of action.”). To be sure, these exact variations among the defendants and  
 22                  computer brands did not hinder relationship and consolidation of the other Nvidia GPU actions.  
 23                  As the Court has already determined, *Decker* deserves similar treatment.

24                  Moreover, not only do the already-related and consolidated cases concern substantially the  
 25                  26  
 27  
 28

1 same parties, but the claims against HP are also predicated on the same underlying conduct. Even  
 2 a cursory review of *Decker* and the other related and Consolidated Actions pending against HP  
 3 reveals that the alleged inability on the part of these same notebook computer model families to  
 4 detect wireless networks is firmly encompassed by the Nvidia GPU Litigation. *Compare Decker*  
 5 Compl. (Exh. 2) at ¶ 4 (“Specifically, the HP laptops at issue in this Complaint . . . (b) are not  
 6 reliable for mobile computing as the internal wireless device is inherently defective making it  
 7 impossible to detect and/or use wireless signals) with *Inicom* FAC at ¶ 28 (alleging, *inter alia*,  
 8 failure to detect wireless networks and related difficulties as symptoms of alleged GPU issue);  
 9 *LeBlanc* Compl. at ¶ 19 (same); *NBOA* Compl. at ¶ 24 (same); *Olivos* Compl. at ¶¶ 4-14 (same);  
 10 and *Waidzunas* Compl. at ¶ 17 (same).

12 Further, allegations that HP failed to disclose these purported performance issues,  
 13 including vis-à-vis wireless connectivity difficulties, are included in the earlier-filed actions. *See*  
 14 *Inicom* FAC at ¶¶ 50-56; *Decker* Compl. (Exh. 2) at ¶¶ 62-87. Likewise, these cases each allege  
 15 that HP breached certain warranties provided with its computers. *See, e.g., Decker* Compl. (Exh.  
 16 1) at ¶¶ 88-100 and *Inicom* FAC at ¶¶ 57-65.<sup>2</sup> Plaintiff Decker’s request should be denied for  
 17 these additional reasons as well.

19 **B. Resolution By A Single Judge Would Avoid Duplication of Effort And The**  
 20 **Potential For Conflicting Results.**

21 As discussed above, the allegations in these cases are substantially similar. The putative  
 22 classes in each action are virtually identical, with the broader putative class definition asserted in  
 23 *Inicom* and the other already-related actions subsuming *Decker*, and there is repetition among the  
 24 defendants. Consequently, the evidence in each case will focus on: the same computers, many of  
 25 the same alleged defects; and other related factual issues. For these reasons too, the legal issues  
 26 will coincide.

27 Accordingly, allowing the parties to proceed on parallel tracks before different Judges in

28 <sup>2</sup> *See also Olivos* Compl. at ¶¶ 46-76; *NBOA* Compl. at ¶¶ 52-60; *Waidzunas* Compl. at ¶¶ 42-46.

1 the same District would squander private and judicial resources and create a risk of inconsistent  
 2 results. *See In re Leapfrog Enter., Inc. Sec. Litig.*, No. C 03-05421 RMW, 2005 WL 5327775, \*1  
 3 (N.D. Cal. July 5, 2005) (granting motion for administrative relief and relating cases). By way of  
 4 example, in addition to compelling redundant litigation and efforts, doing so could bring about  
 5 differing interpretations of the same warranties and/or varying treatment of dispositive issues.

### 6 **III. CONCLUSION**

7  
 8 For the foregoing reasons, HP respectfully requests that this Court deny Plaintiff Decker's  
 9 request to "unrelate" *Decker* from the remainder of the Nvidia GPU Litigation actions.

10 Dated: March 5, 2009

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

13 By: /s/ Robert A. Particelli

14  
 15 Attorneys for Defendant  
 HEWLETT-PACKARD COMPANY